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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JP MORGAN CHASE BANK, N.A., Plaintiff and Respondent, v. STRATEGIC LITIGATION SERVICES, INC., et al., Defendants and Appellants.	B277502 Los Angeles County Super. Ct. No. BC503363

APPEALS from a judgment of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Affirmed in part, reversed in part.

Action Legal Team and Michael N. Sofris for Defendant and Appellant Strategic Litigation Services, Inc.

Michael N. Sofris, in pro. per., for Defendant and Appellant.

Fidelity National Law Group and Peter J. Veiguela for Plaintiff and Respondent.

INTRODUCTION

Lender and secured party JP Morgan Chase Bank, N.A. (JP Morgan) foreclosed on a property located in Beverly Hills. The core issue in the underlying case is whether a recorded deed of trust on the property in favor of Strategic Litigation Services, Inc. (SLS)—which deed is apparently outside the chain of title—is enforceable as against JP Morgan.

The present appeal, however, presents myriad procedural and substantive issues that are both complex and convoluted—a circumstance flowing mainly from the trial court's decision to resolve the case without a trial. We conclude the procedure used by the court was improper.

Attorney Michael Sofris, counsel for SLS and others below, cross-appeals, challenging an award of attorney's fees and costs made jointly and severally against him and SLS. Sofris claims the court improperly intended to sanction him personally. We conclude that the court properly imposed liability on Sofris in his capacity as a defendant, i.e., as trustee for the SLS Holding Trust.

We affirm the sanctions order against Sofris in his capacity as trustee for the SLS Holding Trust. We reverse the judgment and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

1. JP Morgan's Complaint

According to the operative complaint, JP Morgan is the successor in interest to Washington Mutual Bank with respect to a loan secured by a deed of trust (the WAMU deed of trust) relating to a property located in Beverly Hills (the property). By this action, JP Morgan seeks to obtain or confirm it possesses clear title to the property.

The complaint alleges the following relevant[1] events relating to title to the property:

- August 3, 1994: Robert Nathan recorded a claim of lien against the property.
- August 27, 1996: Recorded documents reflect that Nathan's wholly-owned corporation, SLS, obtained title to the property and Nathan's lien was released.
- October 1998: Nathan obtained a loan from Pacific National Bank (Pacific loan) secured by the property as evidenced by a deed of trust (Pacific deed of trust). After Nathan executed the loan documents, SLS transferred the property to Nathan by way of a quitclaim deed (the SLS quitclaim) and purportedly in exchange for a $355,000 loan (the SLS/Nathan

[1] In the interest of brevity, we provide only a general outline of the transactions described in the complaint.

loan) secured by a deed of trust on the property (the SLS deed of trust).[2]

- November 1998: The instruments were not recorded in the order of execution. Instead, the SLS deed of trust was recorded on November 17, 1998, and then the SLS quitclaim and the Pacific deed of trust were recorded on November 19, 1998.[3]
- December 2003: Nathan transferred the property to Donna Morgan (Donna)[4] via a quitclaim deed (the Donna quitclaim). Donna then obtained a loan from Argent Mortgage (Argent loan) secured by the property as evidenced by a deed of trust (Argent deed of trust).
- December 19, 2003: The Donna quitclaim and the Argent deed of trust were recorded.
- March 8, 2004: Proceeds from the Argent loan paid off the Pacific loan, extinguishing the Pacific deed of trust.
- February 2007: Donna refinanced the Argent loan and obtained a new loan from Washington Mutual Bank (the WAMU loan) secured by the property as

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[2] JP Morgan alleges the transaction between Nathan and his corporation, SLS, was a sham transaction in which no money changed hands.

[3] The validity and enforceability of the SLS deed of trust is the subject of JP Morgan's suit.

[4] We refer to Donna Morgan by her first name to avoid confusing her with JP Morgan.

evidenced by the WAMU deed of trust, which was recorded on February 27, 2007.

- 2010: Donna defaulted on the WAMU loan and JP Morgan foreclosed.
- Late 2010: While the WAMU loan was in default, SLS recorded a notice of default relating to the SLS/Nathan loan and the SLS deed of trust.
- 2011: JP Morgan recorded a notice of default on January 25, 2011, a notice of trustee sale on April 26, 2011, and a trustee's deed upon sale (with sale to JP Morgan) on July 26, 2011.

After JP Morgan foreclosed, SLS claimed JP Morgan acquired the property subject to the SLS deed of trust and demanded $1 million, representing the entire loan amount (because no payments had ever been made) and interest accrued over 14 years. In March 2013, JP Morgan filed the present action against Nathan, Donna, SLS, and others, seeking to quiet title and/or cancel the SLS deed of trust, and requesting declaratory relief. The complaint alleged that SLS had been dissolved in 2003. JP Morgan later amended the complaint to add Michael N. Sofris, Trustee of the SLS Holding Trust, as a Doe defendant. Primarily, JP Morgan contended the SLS deed of trust should be invalidated because the transaction was a sham, in that no money actually changed hands as part of the transaction between Nathan and his corporation.

2. SLS's Answer

SLS filed an answer to the complaint, in which it admitted that it was a corporation formed in Nevada in 1996 and dissolved

in or around 2005. Otherwise, SLS generally denied the allegations of the complaint. The answer designated attorney Michael Sofris as counsel for SLS. As noted, JP Morgan subsequently amended its complaint to include as a defendant Michael N. Sofris, Trustee of SLS Holding Trust. Sofris did not separately answer the complaint and his default, in his capacity as trustee, was entered in October 2014.

Notwithstanding the entry of default, Sofris continued to represent SLS, listing himself and his firm on subsequent pleadings as "Attorneys for Strategic Litigation Services, Inc., by and through its successor in interest, the SLS Holding Trust."

3. Trial Briefs

Shortly before trial, the parties submitted briefs setting forth the issues they intended to litigate.

JP Morgan generally contended the SLS deed of trust was outside the chain of title (and therefore unenforceable as against JP Morgan) because it was recorded before Nathan held title to the property. Moreover, JP Morgan asserted, no money changed hands when SLS quitclaimed the property to Nathan and, therefore, the SLS deed of trust was fraudulent. In a related argument, JP Morgan contended SLS and Nathan were alter egos. Finally, JP Morgan urged that the doctrine of merger extinguished the SLS deed of trust. JP Morgan requested a quiet title judgment, a declaration that the SLS deed of trust "is of no force or effect," a further declaration that "[d]efendants have no interest in the property adverse" to JP Morgan's interest, cancellation and expungement of the SLS deed of trust, and costs of suit.

For its part, SLS argued JP Morgan had both actual and constructive notice of the SLS deed of trust and therefore took

title subject to it. SLS also argued that JP Morgan's "unpled claims of alter-ego and merger doctrine" were barred by the applicable statute of limitations. Specifically, SLS stated it had been dissolved in 2005 and Nevada law (Nev. Rev. Stat., § 78.585) provides a maximum of three years in which to bring an action against a dissolved corporation.

In addition to their trial briefs, the parties submitted joint witness and exhibit lists as well as a joint statement of the case.

4. The Court's Resolution of the Case Without a Trial

The matter came on regularly for trial on June 27, 2016. Michael Sofris appeared on behalf of SLS. No trial took place, however.

At the outset of the proceedings, JP Morgan submitted a supplemental brief to the court arguing JP Morgan was entitled to a default judgment against the SLS Holding Trust. JP Morgan reminded the court that a default had been entered several years earlier against attorney Michael Sofris, trustee of the SLS Holding Trust, because he failed to file an answer to the complaint. JP Morgan requested that the court enter a default judgment against Sofris, as trustee, on the third cause of action for cancellation of instrument (i.e., cancelling the SLS deed of trust). And at the hearing, JP Morgan claimed no prove-up was necessary as to that cause of action. JP Morgan also represented to the court that it would dismiss all remaining causes of action against all remaining defendants if it obtained the requested default judgment. Sofris objected to the entry of a default judgment based mainly on the fact that no notice had been provided. The court indicated it would enter a default judgment against Sofris as trustee.

As to SLS, which was not in default, counsel and the court engaged in a wide-ranging colloquy about corporate standing and choice-of-law issues regarding the ability of a dissolved corporation to sue and be sued, after which the court indicated it would strike SLS's answer to the complaint, apparently based on its conclusion that SLS was unrepresented by counsel.[5] The court did not receive any evidence at the hearing.

5. The Judgment and Appeals

On July 5, 2016, the court entered a default judgment in favor of JP Morgan. The judgment purports to provide the following relief as to the property:

"1. Judgment is entered in favor of [JP Morgan] and against Michael N. Sofris, Trustee of the SLS Holding Trust on the third cause of action, Cancellation of Instrument, only[;]

"2. The [SLS] Deed of Trust from Robert J. Nathan to Strategic Litigation Services, Inc., recorded on November 17, 1998 … is hereby cancelled and expunged;

"3. The remaining two causes of action against Michael N. Sofris, Trustee of the SLS Holding Trust are hereby dismissed;

"4. The entire complaint is hereby dismissed against Defendant Robert J. Nathan only;

"5. No Defendants have any interest in the Subject Property;

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[5] Although Sofris appeared at the hearing representing SLS, the court did not allow him to act as counsel for SLS because a default had been entered against him in his capacity as trustee for the SLS Holding Trust.

"6. The Answer of Defendant Strategic Litigation Services, Inc., is stricken[.]"

SLS appeals, and Michael Sofris cross-appeals, from the judgment.

DISCUSSION

SLS raises numerous issues on appeal relating to the truncated procedure that resulted in the entry of judgment in this case. We conclude the court erred by entering judgment in JP Morgan's favor. As for the cross-appeal, which concerns the court's award of attorney's fees and costs incurred in connection with a motion to expunge lis pendens, we conclude the court properly imposed liability for those costs against Sofris in his capacity as trustee for the SLS Holding Trust.

1. The court improperly struck SLS's answer.

Code of Civil Procedure[6] section 436 gives the trial court discretion to strike out all or any part of a pleading not filed in conformity with the laws of this state. We review an order striking a pleading for an abuse of discretion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612; *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145 (*CLD Construction*).)

The court struck SLS's answer on its own motion, and without notice, because it concluded SLS was "unrepresented by counsel." "[U]nder a long-standing common law rule of procedure, a corporation, unlike a natural person, cannot represent itself

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[6] All undesignated statutory references are to the Code of Civil Procedure.

before courts of record in propria persona, nor can it represent itself through a corporate officer, director or other employee who is not an attorney. It must be represented by licensed counsel in proceedings before courts of record. [Citation.]" (*CLD Construction*, *supra*, 120 Cal.App.4th at p. 1145.) But here, SLS *was* represented by an attorney throughout the case and at the hearing at issue, namely, Michael Sofris.

Although the record is not entirely clear on this point, it appears the court concluded that Sofris could not appear in court in *any* capacity because the court had previously entered his default in his capacity as trustee for the SLS Holding Trust. The court erred on this point. When a person acts as a trustee, he or she is effectively an agent for the trust and in that capacity, holds title to trust assets. Thus, in any action seeking to reach trust assets, the trustee is the real party in interest and the proper party to the litigation. But the resulting judgment may be enforced only against the trust's assets—not against the trustee individually. (See, e.g., *Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1349 [discussing liability of trustee acting in representative capacity as limited to trust assets].) Given this distinction, we conclude it was inappropriate for the court to bar Sofris from acting as an attorney on behalf of SLS—a party that was not in default—simply because he was in default in his representative capacity as trustee. Accordingly, we conclude the court abused its discretion in striking SLS's answer and entering a judgment declaring that it has no interest in the property.

To be sure, the court also struck SLS's answer because it concluded that it was a "dissolved corporation," or was not in good standing in California. And the parties raise myriad issues relating to SLS, such as whether it had standing to appear in the

action in the first instance, whether it was operating in good standing in California, whether it could defend the action as a dissolved corporation under either California or Nevada law, and whether its answer could properly have been stricken on some other ground. We conclude, however, that the record on appeal does not contain sufficient information for us to resolve any of these issues—a circumstance resulting mainly from the court's failure to receive any evidence prior to rendering its judgment.

2. The court erred by not conducting a prove-up hearing.

As noted, JP Morgan's complaint contains two substantive causes of action—quiet title and cancellation of instrument.[7] The two claims are distinct. (*Deutsche Bank National Trust Co. v. Pyle* (2017) 13 Cal.App.5th 513, 523 (*Pyle*) [citing *Hyatt v. Colkins* (1917) 174 Cal. 580, 581].) But "[w]here a complaint seeks to quiet title to real property and cancel an instrument and both claims are based on the same facts, it is said that the cancellation claim is incidental to the claim to quiet title such that the action asserts only one claim. [Citation.] Stated differently, a complaint alleging facts authorizing relief both to quiet title and to cancel an instrument may state but one cause of action." (*Ibid*.)

"The purpose of a quiet title action 'is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he [or she] may be entitled to.' " (*Pyle, supra*, 13 Cal.App.5th at p. 523 [citing *Peterson v. Gibbs* (1905) 147 Cal. 1, 5].) This is precisely the relief requested by JP Morgan in its complaint, and it is also the relief embraced by the judgment

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[7] The other stated cause of action was a request for declaratory relief.

because it purports not only to cancel the SLS deed of trust, but it also determines none of the defendants had an interest in the property, to the benefit of JP Morgan.

Actions to quiet title are governed by section 761.010 et seq. The quiet title plaintiff must file a verified complaint including a description of the property, the basis for the plaintiff's claim of title, the adverse claims the plaintiff seeks to adjudicate, the date as of which the plaintiff seeks to adjudicate those claims, and a prayer for the determination of the plaintiff's title against the adverse claims. (§ 761.020.) A quiet title plaintiff must name as defendants "the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property." (§ 762.060, subd. (b).) Any person who has a claim to the property may appear as a defendant, whether or not they are named in the complaint. (§ 762.050.)

Before entering a judgment quieting title, "The court shall examine into and determine the plaintiff's title against the claims of all the defendants. *The court shall not enter judgment by default* but shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants, other than claims the validity of which is admitted by the plaintiff in the complaint. The court shall render judgment in accordance with the evidence and the law." (§ 764.010, italics added.) "[U]nlike the ordinary default prove-up, in which a defendant has no right to participate [citation], before entering any judgment on a quiet title cause of action the court must 'in all cases' 'hear such evidence as may be offered respecting the claims of any of the defendants.' " (*Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1502; *Pyle, supra*, 13 Cal.App.5th at p. 524.)

As already noted, the court did not conduct a prove-up hearing in this case. Nevertheless, it issued a judgment effectively quieting title to the property in JP Morgan. We conclude the court erred and we must therefore reverse the judgment and remand for further proceedings in which the court examines the evidence in accordance with these principles.

3. Sofris's Cross-appeal

The cross-appeal by Michael Sofris presents a discrete factual and legal issue. Sofris contends the court erred in imposing an award of attorney's fees and costs against him, jointly and severally with SLS.[8] JP Morgan did not file a respondent's brief in response to the cross-appeal. We conclude that the court's order was directed at Sofris in his capacity as trustee of the SLS Holding Trust, not in his individual capacity. We therefore reject this contention.

In the early stages of the litigation below, JP Morgan filed a notice of pending action (lis pendens) under section 405.2. SLS moved to expunge the lis pendens and the caption of the motion indicated the motion was filed by Sofris as counsel for "Strategic Litigation Services, Inc., a dissolved corporation by and through its successor in interest Michael N. Sofris, Trustee for Real Party in Interest SLS Holding Trust." JP Morgan opposed the motion. The court denied SLS's motion and awarded JP Morgan "reasonable attorney's fees and costs" of $3,900 under section 405.38. The court imposed the award jointly and severally against SLS and "counsel."

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[8] An order awarding monetary sanctions of $5,000 or less may be reviewed on appeal from the judgment. (§ 904.1, subd. (b).)

Section 405.38 generally requires the court to make an award of costs and attorney's fees to the prevailing party on a motion to expunge lis pendens. It provides, "The court shall direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney's fees and costs unjust." (§ 405.38.) By awarding costs and fees to JP Morgan, the court impliedly concluded that SLS and/or Sofris, as Trustee of the SLS Holding Trust, did not act with substantial justification in bringing the motion to expunge lis pendens. Sofris does not challenge that finding.

Instead, Sofris notes that at least one court has held that an award of attorney's fees against an attorney for a party to a motion to expunge lis pendens is inappropriate in the absence of some evidence the attorney personally abused the process. (See *Doyle v. Superior Court* (1991) 226 Cal.App.3d 1355, 1359 [analyzing predecessor statute].) He argues, then, that the court erred in making him personally liable (albeit jointly and severally liable) for the cost and fee award.

We would agree with Sofris if his only role in this litigation was as counsel. But as already explained, Sofris also appeared in this action as a defendant, i.e., as trustee for the SLS Holding Trust. And with respect to the motion to expunge lis pendens, Sofris listed the party bringing the motion as "Strategic Litigation Services, Inc., a dissolved corporation by and through its successor in interest Michael N. Sofris, Trustee for Real Party in Interest SLS Holding Trust." The court's order does not specify whether the court intended to impose costs and attorney's fees

against Sofris individually, as counsel, or against Sofris in his capacity as trustee. We presume, however, that the court intended to make a lawful order and therefore conclude the court intended Sofris to be liable for the fee and cost award solely in his capacity as trustee of the SLS Holding Trust. With that clarification, we see no error in the court's award of attorney's fees and costs to JP Morgan.

DISPOSITION

The judgment is affirmed to the extent it requires Michael Sofris, as trustee of the SLS Holding Trust, to pay JP Morgan $3,900 in costs and attorney's fees. The judgment is otherwise reversed and the matter is remanded for further proceedings consistent with this opinion. In the interest of justice, all parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.